below holding that the Commission lacks any authority to consider the direct sales of the interstate pipelines in passing upon the curtailment plans instituted by the pipelines in periods of gas supply shortage. As the Solicitor General's petitions point out, the opinion below is in direct conflict with prior statements of this Court stating that curtailment of service to direct customers is primarily related to transportation of natural gas "and thus within the jurisdiction of the Commission to control" *Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana*, 322 U.S. 507, 523; see *Federal Power Commission v. Transcontinental Gas Corp.*, 365 U.S. 1, 28 (1961).

Relying on such opinions and its extensive powers over the interstate transportation of gas under Sections 4, 5 and 16 of the Natural Gas Act (15 U.S.C. §§ 717(c), 717(d), and 717(o)), the Commission over the years has handled pipeline curtailment proceedings, including questions as to the amount of gas to be made available to direct customers, under these sections. See, *e.g.*, *City of Detroit, Michigan, et al. v. Panhandle Eastern Pipe Line Co., et al.*, 6 F.P.C. 196 1947).[3] The result of the lower court's decision is thus to carve out from the Federal Power Commission's effective control in curtailment situations a major portion of the gas flowing in interstate commerce.

[3]The suggestion of the court below that the pipeline could voluntarily vest the Commission with jurisdiction over direct sales by filing for complete or partial abandonment of its transportation service for the direct sale under Section 7(b) of the Act, is by no means a practical solution to the problem. For this leaves vindication of the public interest in avoiding discrimination to the pipeline which may be the cause of the discrimination. Nor, even assuming they had authority to do so, is this a situation in which the states where the direct sales are made would have any interest in limiting the amount of gas available for such customers in order to more fairly ration the available gas among all of the pipeline's customers in the other states. See *Federal Power Commission v. Transcontinental Gas Pipe Line Co.*, 365 U.S. 1, 28 (1961); *California v. LoVaca Gathering Co.*, 379 U.S. 366, 370 (1965).

We also concur with the views of the Solicitor General that this Court should review that part of the decision of the court below holding that the Commission has no certificate jurisdiction over certain sales United is making in Louisiana to both direct and wholesale customers under circumstances where the gas flowing in the particular lines had originally all come from intrastate sources and the amount of out-of-state gas now flowing in these lines was, in the lower court's opinion, *de minimus*. *But, cf. Federal Power Commission v. Florida Power & Light Co.*, (United States Supreme Court No. 70-38, decided January 12, 1972). In this respect we point out that the jurisdictional issue involved in this part of the case, which as the Solicitor General indicated in his brief was pending before the Federal Power Commission at the time of the lower court's opinion[4] is directly related to the basic curtailment issue. For under a number of the sales contracts involved, United has agreed to *increase* sales to such parties at the same time as it was substantially curtailing service to its other interstate customers.

Finally, we cannot urge too strongly that this Court take action to insure that the matter will be brought before it for decision during this term of court. As indicated above, consumers of gas in New York are already being curtailed and the extent of this curtailment can increase dramatically if all direct customers of the pipelines directly or indirectly serving New York are immune from Commission control over pipeline curtailment plans. Moreover, a critical period of pipeline curtailment of gas is likely to occur during the heating season commencing in November of 1972. It is imperative therefore that the basic determination as to whether the Commission's authority over pipeline curtailment practices extends to direct sales be made in time for the

[4]Since the filing of the Motion and Writs of Certiorari, the Commission on February 9, 1972 issued Opinion 610 in *United Gas Pipe Co.*, Docket No. CP71-89, holding that it did have jurisdiction over the sales in question.

Commission to act this spring in order to provide adequate relief for the next winter heating season. This can only be accomplished if the Court is prepared to act before the end of its current term.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.
(The Collateral Proceeding)

FEDERAL POWER COMMISSION, *Petitioner*

v.

LOUISIANA POWER & LIGHT COMPANY, ET AL.
(The Curtailment Proceeding)

RESPONSE OPPOSING MOTION FOR EXPEDITED CONSIDERATION

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RESPONSE OPPOSING MOTION FOR EXPEDITED CONSIDERATION

Shell Oil Company, an intervenor before both the Federal Power Commission and in the Fifth Circuit Court of Appeals in the so-called "curtailment proceeding,"[1]

1. The lead case in the Fifth Circuit seeking review of the Federal Power Commission's opinions in the curtailment proceeding is *Louisiana Power & Light Co., and New Orleans Public Service, Inc. v. Federal Power Commission,* Case No. 71-3429.

pursuant to Rule 35 of the Rules of The Supreme Court, opposes the Motion For Expedited Consideration filed herein by the Solicitor General on behalf of the Federal Power Commission. The motion asked that responses to the petitions for certiorari (which were attached to the motion) be required to be filed by February 28, 1972. The motion and petitions for certiorari were filed February 7, 1972 and were served on Shell by mail on February 10, 1972.

Rule 24 of Rules of the Supreme Court provide for 30 days after receipt of a petition to file an opposing brief. Under this rule, Shell would have until March 11, 1972 to file its opposing brief. The full time is needed in view of the complex nature of the decision for which review is sought, particularly if the review is to include the primary jurisdiction question[2] as presented in the Solicitor General's petition as well as the issue of the Commission's curtailment jurisdiction.

On February 15, 1972, Shell was served a copy of the Petition of United And Pennzoil For Writs of Certiorari To The United States Court Of Appeals For The Fifth Circuit, which seeks review of the same decision as is sought by the Solicitor General on behalf of the Federal Power Commission. On February 9, 1972, after the filing of the Solicitor General's motion and petitions, but prior to the filing of the United-Pennzoil petition, the Federal Power Commission issued its Opinion No. 610 in Docket No. CP71-89, *United Gas Pipe Line Company* (Appendix F to the United-Pennzoil petition). This opinion finds, *inter alia*, that the Federal Power Commission has juris-

2. The primary jurisdiction question is the second question presented in the Solicitor General's petition, relating to certificate jurisdiction over United's intrastate facilities.

diction over United's "Green System-East", which finding is in direct conflict with a finding of the Fifth Circuit in the decision for which review has been sought herein. Opinion No. 610 is the finding of primary jurisdiction which the Solicitor General contends should have preceded the Fifth Circuit decision.

Section 19(a) of the Natural Gas Act (52 Stat. 831; 15 U.S.C. § 717r) states in pertinent part as follows:

> "SEC. 19 (a) Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this act to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied."

Shell is a "person aggrieved" by Commission Opinion No. 610 within the meaning of the Natural Gas Act. Shell is both a seller to, and a purchaser from, United's "Green System-East". We are now preparing an application to the Federal Power Commission for rehearing on its Opinion No. 610 to be filed before March 10, 1972. Action by the Commission thereon will have a material bearing on the primary jurisdiction issue urged to this Court for review. The certificate case (Docket No. CP71-89) was commenced on October 1, 1970 and the record was closed on July 2, 1971. The Commission's Opinion No. 610 in the certificate case was not issued until Feb-